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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,785

01/21/2005

Andrew John Wallis

T4515-16173US01

1963

181 7590 08/14/2009
MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN, VA 22102-3833

EXAMINER

HICKS, ROBERT J

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

08/14/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milesstockbridge.com
sstiles@milesstockbridge.com

Office Action Summary	Application No. 10/521,785	Applicant(s) WALLIS ET AL.	
	Examiner ROBERT J. HICKS	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2009 and 09 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/9/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Because of the applicant's amendment, filed on March 24, 2009, the original objections to claims 1, 3, 4, and 10, in the office action filed October 24, 2008, are hereby withdrawn.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on April 9, 2009 was filed after the mailing date of the non-final office action on October 24, 2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

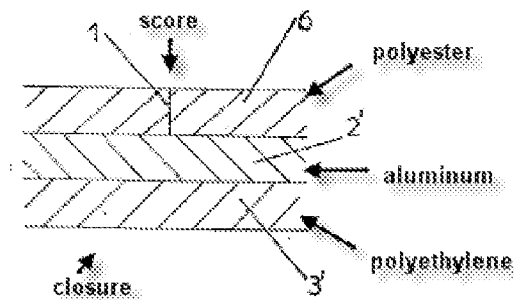
4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

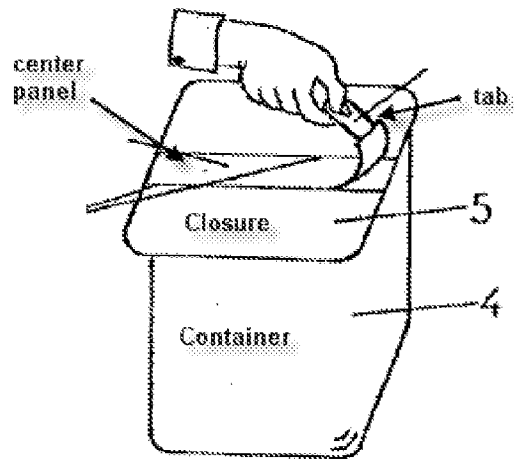
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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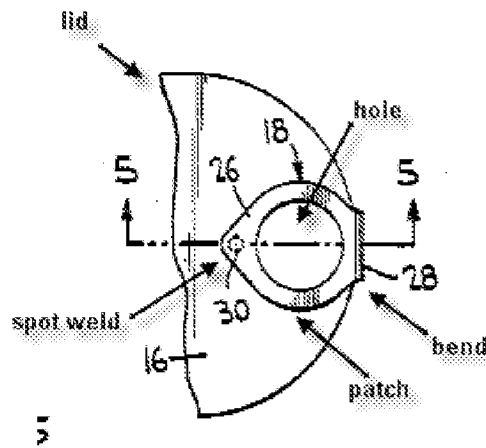
5. Claims 1-5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerard et al. (French Patent Application No. 2,577,897) [Gerard] in view of Kubis et al. (4,834,259) [Kubis].

6. Regarding Amended Claim 1, the publication to Gerard – a sealed multi-layered non-peelable lid with peelable section – discloses a peelable lid structure (middle of 5) for a container (4), the peelable lid structure including; a barrier layer (6) for preventing the passage of fluids (Page 3 Lines 33-37); and a tab (7) extending from a centre panel (8) of the peelable lid structure for removing the peelable lid structure from the container to allow access to the container contents (Fig. 3); in which the barrier layer extends from the centre panel into the tab and includes less than 20 microns thickness of aluminum (2', Fig. 2, Page 3 Lines 22-28). The examiner has enclosed a translation of the Gerard reference.





Gerard does not expressly disclose the remaining features of amended claim 1; however, however, the patent to Kubis – a peelable membrane with foldable tab – discloses a cover (**Kubis**, 16) with a tab (**Kubis**, 18) for a container (**Kubis**, 12), in which the tab is foldable over the center panel (**Kubis**, 28) and is secured onto the cover (**Kubis**, 30, Col. 2 Lines 19-22). The tab is bonded to the panel with a bond. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the pull tab on the Gerard peelable membrane to be foldable and secured onto the cover during processing of the contents, as suggested by Kubis, so that "the pull tab **18** is stored against damage during the handling of the package **10**." (**Kubis**, Col. 2 Lines 23-25)



7. Regarding Claim 2, Gerard in view of Kubis discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Gerard discloses the aluminum layer (**Gerard**, 2') is not more than 15 microns in thickness (**Gerard**, Page 3 Lines 27-28).

8. Regarding Amended Claims 3 and 10, Gerard in view of Kubis discloses all the limitations substantially as claimed, as applied to amended claim 1 and claim 2 above, respectively; further, Gerard discloses the peelable lid structure includes a layer of aluminum (**Gerard**, 2', Fig. 2, Page 3 Lines 22-26).

9. Regarding Amended Claim 4, Gerard in view of Kubis discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Kubis discloses the tab is secured in the folded position by an adhesive or by heat sealing (**Kubis**, 30, Col. 2 Lines 19-22).

10. Regarding Claim 5, Gerard in view of Kubis discloses all the limitations substantially as claimed, as applied to amended claim 4 above; further, Kubis discloses the tab includes a patch (**Kubis**, 22), an area of which is exposed by a hole in the tab

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(**Kubis**, 24, Fig. 3), and the tab is secured in the folded position by the adhesive or heat sealing to the exposed area of patch (**Kubis**, 30, Col. 2 Lines 19-22).

Response to Arguments

11. Applicant's arguments with respect to claims 1 and 5 have been considered but are moot in view of the new ground(s) of rejection.

12. In response to applicant's argument that the Roth et al. (4,757,914), Kurita et al. (6,277,478) and Kubis combination fails to show certain features of applicant's invention regarding amended claim 1 {**Remarks**, Page 7 Lines 5-10}, see Paragraph 6 of this office action to see how Gerard in view of Kubis meets the claim limitations regarding amended claim 1.

13. In response to applicant's argument that the Kubis reference fails to show certain features of applicant's invention regarding claim 5 {**Remarks**, Page 9 Line 22 to Page 10 Line 10}, Kubis does disclose on the tab (**Kubis**, 18) a patch (**Kubis**, 22) exposed by a hole (**Kubis**, 24) and in which the patch has a bonding material (**Kubis**, 30) that allows the tab to be attached in the folded position when processing (**Kubis**, Figs. 4 and 5).

Election/Restrictions

14. This application contains claims 6-9 drawn to an invention nonelected without traverse in the reply filed on October 24, 2008. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

16. Applicant's amendment, and submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on April 9, 2009, prompted and necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §§ 609.04(b) and 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony D Stashick/
Supervisory Patent Examiner, Art
Unit 3781